

321—25.26(231C) Involuntary transfer.

25.26(1) Program initiation of transfer. If a program initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by DIA, and if the tenant or tenant's legal representative contests the transfer, the following procedure shall apply:

a. The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information for the tenant advocate.

b. The program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification to the tenant.

c. The tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.

d. If, following the internal appeal process, the program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

25.26(2) Transfer pursuant to results of monitoring evaluation or complaint investigation by DIA. If one or more tenants are identified as meeting the occupancy and transfer criteria and need to be transferred as a result of a monitoring evaluation or complaint investigation conducted by DIA, the following procedures shall apply:

a. DIA shall notify the program, in writing, within 20 working days of the monitoring evaluation or complaint investigation, of the identification of any tenant(s) meeting occupancy and transfer criteria, as a part of the report of the findings.

b. The program, each tenant identified, the tenant's legal representative, if applicable, and other providers of services to the tenant shall be notified of their opportunity to provide specific input, written comment, information and documentation directly addressing any agreement or disagreement with the identification.

c. The program shall submit one response, including all inputs received, to DIA. The response shall identify the tenant and others submitting input, and also identify with particularity their agreement or disagreement. The program's response shall be submitted to DIA within 10 working days of the receipt of the report of the findings. Submission of a response does not eliminate the requirement under this chapter or 321—Chapter 26 to submit a plan of correction to address the regulatory insufficiency.

d. Within 10 working days of receipt of the program's response for each identified tenant, DIA shall consider the response and make a determination regarding continued inclusion of a tenant.

e. If DIA's determination is to amend the regulatory insufficiency based on the response, DIA shall modify the report of findings and send an amended report to the program.

f. If the determination is to uphold the regulatory insufficiency, DIA shall review the plan of correction in accordance with this chapter and 321—Chapter 26. DIA shall notify the program of the opportunity for the program or the tenant or the tenant's legal representative, as applicable, to appeal the report findings as they relate to the occupancy and transfer decision. In addition, DIA shall provide to the tenant or the tenant's legal representative the contact information for the tenant advocate. A copy of the final report shall also be sent to the tenant advocate.

g. For each tenant identified in the final report, if the program is in agreement with the report and the tenant or the tenant's legal representative, if applicable, disagrees with the report, the tenant or the tenant's legal representative, if applicable, may appeal the decision to DIA in accordance with 321—subrule 26.3(2).

h. For each tenant identified in the final report, if the tenant or the tenant's legal representative, if applicable, and the program disagree with the report, both parties may appeal the decision to DIA in accordance with 321—subrule 26.3(2).

i. The tenant advocate shall offer the notified tenant or tenant's legal representative, if applicable, assistance with the appeal process. The tenant or the tenant's legal representative, if applicable, is not obligated to use the services of the tenant advocate.

j. Any appeal filed under 321—subrule 26.3(2) shall stay any enforcement action regarding the regulatory insufficiency related to the occupancy and transfer decision and shall be heard within 30 days of receipt of the appeal.

k. Actions regarding any regulatory insufficiency, other than the occupancy and transfer decision, shall follow procedures as provided in Iowa Code Supplement chapter 231C, this chapter and 321—Chapter 26.

l. An appeal under 321—subrule 26.3(2) shall automatically extend the expiration date of the program's certification until such time as the administrative case is resolved.

m. In lieu of or in addition to the provisions of this subrule, the program may request a waiver from DIA within 10 working days of the receipt of the report to allow a tenant to remain in the program. DIA may grant a waiver for a period not to exceed 90 calendar days.